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Joint Inspection Unit

Administration of justice at the United Nations

Report of the Joint Inspection Unit on administration of justice: harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal

Note by the Secretary-General

Addendum

Summary

Pursuant to section 4 (d) of the statute of the Joint Inspection Unit (JIU), the present report contains the comments of the Secretary-General on the report of JIU entitled "Administration of justice: harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal". The JIU report was mandated by the General Assembly in its resolution 57/307.

The idea of harmonizing the statutes of the United Nations Administrative Tribunal and the International Labour Organization (ILO) Administrative Tribunal has been a subject of ongoing debate in the Organization for the last several years. The position of the Secretary-General on the matter was explained in his report (A/56/800) and remains valid vis-à-vis the recommendations contained in the JIU report.

* A/59/150.

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I. Introduction

1. The main objective of the Joint Inspection Unit (JIU) report, as indicated by the Unit, is "to provide a definitive opinion on the feasibility of harmonizing the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal with the view to closing the gap between the two and removing the perception of inequality and discrimination in administration of justice within the United Nations family, thus strengthening the United Nations common system".

2. In paragraph 15 of General Assembly resolution 57/307, JIU was mandated "to continue studying the possibility of harmonizing the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal, bearing in mind the information contained in paragraphs 39 to 42 of the report of the Secretary-General (A/56/800), for consideration by the General Assembly at its fifty-ninth session". The General Assembly noted with concern in the same paragraph that "the staff of the United Nations Secretariat and the specialized agencies are subject to two different systems of administration of justice".

3. The Secretary-General welcomes the JIU report and invites the Assembly to take into consideration the views expressed in his recent report on the administration of justice in the Secretariat (A/56/800), which remain valid with regard to the JIU report.

II. Comments on specific recommendations

Recommendation 1

The General Assembly should continue to keep under review the issue of selection and appointment of members of the United Nations Administrative Tribunal with a view to bringing these practices into conformity with the statute and practices of the ILO Administrative Tribunal.

Recommendation 2

The General Assembly should amend article 10 of the United Nations Administrative Tribunal statute to bring it into conformity with the ILO Administrative Tribunal statute and settle the issues of specific performance and compensation limitations.

4. In considering recommendations 1 and 2 above, the views expressed by the Secretary-General in his report (A/56/800) still apply. Paragraphs 36 to 38 of that report discuss and compare the provisions of the statutes of the ILO Administrative Tribunal and the United Nations Administrative Tribunal on the issues of selection, appointment and qualifications of members, and their respective powers to grant compensation and specific performance. Paragraphs 39 to 43 outline the issues to be considered before making any changes to the statutes.

5. In paragraph 39 of that report, the Secretary-General expressed the view that the "issue of specific performance should not be viewed in isolation". Other criteria, notably the selection criteria, procedures and qualifications of tribunal members, should be taken into account at the same time. The General Assembly may wish to

bear this in mind when considering recommendation 1. It should also be noted that, when considering recently the issue of modifying the qualifications of members of the United Nations Administrative Tribunal, the Assembly decided in paragraph 14 of resolution 57/307 to amend the United Nations Administrative Tribunal statute so that its members would be required to "possess judicial experience in the field of administrative law or its equivalent within the candidate's national jurisdiction". However, the Assembly later decided in its resolution 58/87 to amend article 3, paragraph 1 of the statute so that United Nations Administrative Tribunal members would be required to "possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction". The addition of the words "or other relevant legal" effectively confirmed the differences in the qualifications of the members of the Tribunals between the two statutes. In respect of recommendation 2, the Secretary-General expressed his willingness "to reconsider his position on the question of specific performance *if the statutes and practices of the two tribunals were fully harmonized*" (A/56/800, para. 42, emphasis added), and also suggested that "alternatively, the current system could be retained with an increase in the limit of compensation" (A/56/800, para. 43).

Recommendation 3

The General Assembly should continue to treat, as a matter of priority, the improvement of other elements of the process of internal justice that precede the Tribunal stage of a dispute. Those processes are slow and cumbersome; expediting and improving those measures may lead to fewer cases being brought to the Tribunal and result in less costly decisions and procedures.

6. The Secretary-General agrees that every effort should be made to expedite and improve elements of the process of internal justice that precede the Tribunal stage of a dispute. The Office of Internal Oversight Services (OIOS) will be submitting to the Assembly at its fifty-ninth session its report on the management review of the appeals process with recommendations on how to improve the process and make it more expeditious. As requested by the Assembly, the report of the Secretary-General on this issue will take account of OIOS findings and make recommendations.

Recommendation 4

The Secretary-General, in his capacity as chairman of the United Nations System Chief Executives Board for Coordination, should invite the Board to develop a mechanism to enhance cooperation and facilitate professional exchange and regular dialogue between the United Nations Administrative Tribunal, the ILO Administrative Tribunal and other international administrative tribunals, particularly with respect to the uniform and consistent application of case law, which is the primary determinant of fair and equal systems of justice.

7. The scope of the recommendation to "develop a mechanism to enhance cooperation and facilitate professional exchange and regular dialogue between the United Nations Administrative Tribunal, the ILO Administrative Tribunal and other international administrative tribunals, particularly with respect to the uniform and consistent application of case law, which is the primary determinant of fair and equal systems of justice" is unclear. In paragraph 6 of the JIU report, the inspectors

note that "the European Space Agency is developing a database of case law of all international administrative tribunals, which could be a base for further cooperation between tribunals". If the recommendation of the inspectors is limited to the use of jurisprudence of other tribunals before the United Nations Administrative Tribunal in a persuasive capacity rather than as precedent, it should be noted that the United Nations Administrative Tribunal and the ILO Administrative Tribunal routinely rely on and cite each other's jurisprudence. Consequently, access to the database being elaborated by the European Space Agency would be of benefit. It should also be noted that statutes, judgements and other such documentation as the annual reports of the United Nations Administrative Tribunal to the Assembly are readily available to all interested parties. On the other hand, if the cooperation between Tribunals envisaged by the Joint Inspection Unit implies the active involvement by one Tribunal in the consideration of a specific case by the other Tribunal, or the use of the jurisprudence of other tribunals as precedent rather than in a persuasive capacity, it is unlikely that such an arrangement could be made without amendment of the respective statutes. Moreover, the Secretary-General is concerned that such active involvement, or perhaps other forms of cooperation contemplated by JIU, may be perceived as encroaching on the independence of judges.

8. In this respect, JIU observed in paragraph 6 of its report that "until now, the case law of the United Nations Administrative Tribunal and the ILO Administrative Tribunal has been surprisingly uniform and consistent", but made reference to "some discrepancies in case law that could be avoided with better cooperation between the Tribunals". Consideration of the issue would be assisted by the identification of these discrepancies.

III. Other comments

9. In its report on the administration of justice in the Secretariat (A/57/736), the Advisory Committee on Administrative and Budgetary Questions had noted that, should the Assembly accept the Committee's recommendation to amend the United Nations Administrative Tribunal statute to require that candidates for the Tribunal possess judicial experience in the field of administrative law or its equivalent in the candidate's national jurisdiction, "proposals could be made by the Secretary-General regarding compensation" (para. 16). As noted in paragraph 7 above, however, the amendment made by the Assembly in resolution 58/87 in effect confirmed the differences in the qualifications required of the United Nations Administrative Tribunal members and the ILO Administrative Tribunal judges under their respective statutes. The alignment of the compensation received by the ILO Administrative Tribunal judges and the compensation received by the United Nations Administrative Tribunal members would have implications, which the Secretariat will explain in a separate document. In addition, the removal of the cap on the amount of compensation that may be awarded to claimants (recommendation 2) may give rise to additional financial implications.